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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 705

COMPETITION IN THE RAILROAD INDUSTRY

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COMMENTS OF
PPG INDUSTRIES, INC.

PPG Industries, Inc. ("PPG") hereby submits its comments in response to the Surface Transportation Board's ("STB" or "Board") Notice, dated January 11, 2011, inviting written comments addressing competition in the railroad industry. The Board will also hold a public hearing on this matter on June 22, 2011.

PPG applauds the STB for its approach and willingness to gain a better understanding of the factual, legal, and policy issues associated with rail competition. PPG also appreciates the opportunity to explain to the Board why changes to the existing regulatory structure are needed to increase competitive rail access, which will allow shippers, such as PPG, to compete more effectively in today's global business environment.

PPG strongly supports the Joint Comments submitted in this proceeding by a number of shippers' organizations ("Joint Comments").¹ The Joint Comments explain in detail the loss of rail competition that has occurred over the past decades, the Board's authority and discretion that

¹ Joint Comments of Alliance For Rail Competition, The American Chemistry Council, American Forest And Paper Association, American Public Power Association, The Chlorine Institute, Colorado Wheat Administrative Committee, Consumers United For Rail Equity, Edison Electric Institute, Glass Producers Transportation Council, Idaho Barley Commission, Idaho Wheat Commission, Kansas Wheat Commission, Large Public Power Council, Montana Farmers Union, Montana Wheat & Barley Committee, National Grain And Feed Association, The National Industrial Transportation League, National Rural Electric Cooperative Association, Nebraska Wheat Board, Oklahoma Wheat Commission, Portland Cement Association, South Dakota Wheat Commission, Texas Wheat Producers Board, The Fertilizer Institute, U.S. Clay Producers Traffic Association, And Washington Grain Commission, April 12, 2011.

allow the agency to change its current policies to help restore competition, and the public benefits that could be achieved from enhanced competition. PPG incorporates the Joint Comments herein by reference and joins the Joint Commenters in urging the STB to take immediate actions to increase competitive rail service and limit the extent of railroad monopoly pricing imposed on many U.S. businesses, including those that ship Toxic by Inhalation ("TIH") products, such as PPG. PPG also supports a review of the competitive conditions that were made when the railroad "mega-mergers" were approved to ensure that the conditions have protected rail competition as intended.

I. IDENTITY AND INTEREST OF PPG

PPG is a diversified manufacturer of chemicals, protective coatings, glass and fiber glass with over 14,000 employees in the United States (U.S.) and more than 50 manufacturing, research and distribution facilities across the country. PPG operates in more than 60 countries with total sales in 2010 exceeding \$13 billion.

PPG's commodity chemicals segment produces chlor-alkali and derivative products including chlorine, liquid caustic soda, vinyl chloride monomer, ethylene dichloride, chlorinated solvents, hydrochloric acid, calcium hypochlorite, and other chemicals. Most of these products are sold directly to manufacturing companies in the chemical processing, plastics and rubber, paper, minerals, metals, and water treatment industries. PPG's North American chlor-alkali chemicals business operates three production facilities and employed over 1800 people in 2010. PPG is the third largest North American producer of chlor-alkali products with facilities in Natrium, WV; Lake Charles, LA; and Beauharnois, Canada. PPG also operates chemical facilities that receive chlorine by rail at Laporte, TX and Barberton, OH.

Some of these products, such as chlorine, are classified as TIH and are transported by rail. It is undisputed that rail transportation is the safest over-land method of transporting this commodity. Although PPG can ship chlorine to a limited extent by barge and to certain customers by pipeline, many chlorine consumers cannot physically receive chlorine by barge or pipeline. Due to safety considerations, PPG does not ship chlorine by truck in North America.

II. A LACK OF RAIL COMPETITION RESULTS IN TREMENDOUSLY HIGHER FREIGHT RATES FOR PPG'S CAPTIVE TRAFFIC, WHICH ADVERSELY IMPACTS PPG'S COMPETITIVE POSITION IN THE CHEMICAL INDUSTRY AND ECONOMIC GROWTH

Safe, secure and economical rail transportation is a critical component of PPG's ability to effectively continue its business. However, the railroads do not want to haul TIH products. In fact, several railroads have made requests, and at times demanded, complete indemnification from the railroads' own acts or omissions, including rail accidents with TIH products, regardless of their own gross negligence. As a result of the railroads' aggressive position on handling TIH products and the lack of competition involved with a substantial portion of PPG's rail shipments, PPG has seen the cost per ton to ship chlorine throughout its system increase over 100% (excluding mileage income) since 2004. In comparison, the cost per ton for all other chlor-alkali chemicals (excluding TIH) shipped by PPG has only risen slightly more than 20% (excluding mileage income) since 2004. In comparison the all inclusive index less fuel, a rail index that tracks costs, has only risen 31% during this same time period.

Moreover, while many suppliers made pricing concessions during the recession due to a decline in demand, railroads kept their rates high and even raised their prices. For example, commodities such as butane, electricity, propylene, ethylene, gasoline and liquid caustic soda experienced approximately a 30% to 40% decline in pricing from 2008 to 2009.

PPG is subject to very different rate structures at its plants based on a lack of competitive rail access. PPG's plant in Natrium, WV is captive to one railroad (CSXT) while PPG's facility in Lake Charles, LA has access to three railroads (BNSF, KCS, UP). The cost per ton for shipments of chlorine from Natrium, WV were approximately 70% higher than those from Lake Charles, LA in 2004. This premium increased to almost 85% in 2010. This significant discrepancy in rates discourages the most effective management of PPG's assets, including both transportation and manufacturing. These increased costs have far reaching impacts on PPG and its customers. For example, PPG was unable to even quote new business which would have been beneficial for the Natrium plant as the cost to transport the product was higher than the product's price. The customer, who does other business with PPG, was frustrated as they wanted to do chlorine business with PPG. The customer was also disturbed with the lack of competitive supply options.

The lack of competition at the customer location also results in the payment by PPG of substantially inflated freight rates. For example, PPG ships chlorine from the Lake Charles, LA facility, which is served by BNSF, KCS, and UP, to Laporte, TX, which is captive to UP. Even though PPG has access to multiple carriers at Lake Charles, the UP is able to effectively cut off PPG's access to this competition on shipments to Laporte by protecting the single-line haul to Laporte. Reciprocal switching at Laporte — which is just outside Houston, TX— will restore that access by giving PPG the option of using BNSF, which operates a line within 25 miles of Laporte. The benefit of this access is clearly illustrated by the dramatically different rates that PPG pays for shipments of chlorine from Lake Charles to non-captive Houston customers, which are nearly the same distance from Lake Charles as Laporte. The distance from Lake Charles to Laporte is approximately 165 miles and from Lake Charles to Houston is approximately 145

miles. Despite the similarity in product and distance, the chlorine rate to the captive Laporte location is approximately 50% higher than the rates to customers in Houston that are not captive.

Another issue faced recently by PPG involves a captive rail customer with a new tariff requirement published by a short-line carrier. The short-line carrier is one of three railroads participating in the route to the customer. Since the customer is captive to the short-line, PPG must use the short-line to move a TIH car on a 25-mile segment to the destination. However, the short-line has now implemented a tariff requiring a permit and special train for TIH movements. The total cost to move chlorine to this customer is now double to quadruple the cost prior to the new requirements taking effect, depending on how many cars are moved at a time. The cost increase is primarily attributable to a special train cost of approximately \$15,000 per movement. While filing a rate or unreasonable practice case at the STB is an option, there are substantial costs and delays associated with such remedies.

PPG advocates for a safe, secure and fairly priced railroad system that will allow PPG to service customers and take advantage of global opportunities and new domestic growth. As the economy in the U.S. continues to recover from the recession, it is imperative for growth and long-term sustainability that the region remains globally competitive. However, since the chlor-alkali supply chain is highly dependent on rail service, the lack of competitive pricing results in transportation costs becoming a larger portion of the overall cost structure for such products. As a hypothetical example, if the cost of chlorine is \$250/ton and the freight is \$35/ton; then transportation accounts for 14% of the overall cost structure. If the freight increases by 100% to \$70/ton and the product price remains the same; the freight becomes 28% of the overall cost structure. With freight at \$70/ton, the product cost would have to double to maintain the freight costs at the same percentage of the total costs. This type of product cost increase is not realistic.

PPG is very concerned that current pricing trends will drastically reduce and, perhaps in some cases, even foreclose export opportunities. Already, PPG has exited export business from the Laporte, TX facility due to railroad behaviors. In this instance, the railroad chose not to haul a TIH product under the intermodal exception to the common carrier obligation which prevented PPG access to the West Coast ports. PPG tried to truck the product to the port, but it became uneconomical to do so, and instead, PPG was not able to participate in the export business. The same result would likely have occurred if, instead of refusing the traffic, the railroad effectively cut off access to rail service by increasing its rate to the port.

PPG is aware of opportunities to increase jobs and grow with the Marcellus Shale opportunities near the Natrium, WV plant. However, as PPG examines potential opportunities, the concern over being captive to a single railroad and the lack of competitive alternatives from this plant is a concern. In discussions with interested parties looking to co-locate a more than \$1 billion chemical facility in Natrium WV, the lack of competitive rail service is a very serious concern and a true potential barrier to new business. PPG wants to continue to see the region and the economy grow and not have the potential growth stifled by an uncompetitive rail system.

Where rail transportation is not involved, growth in the chemical industry has flourished, despite the weakened U.S. economy. An example of such growth involves chemical exports supported by a competitive U.S. cost position mainly attributed to natural gas. In 2010, U.S. shippers of polyvinyl chloride (PVC), a major end-use consumer of chlorine, exported on average 34% of their sales which is a historical record level. The majority of chlorine for PVC moves via pipeline. Had the PVC industry been forced to move chlorine via rail, the rail rates would have negatively impacted the competitiveness of the industry to export and, thereby, help combat a weak U.S. economy.

III. A LACK OF RAIL COMPETITION FORCES PPG TO ENDURE POOR SERVICE, INEFFICIENCIES AND HIGHER COSTS

Another issue PPG faces due to a lack of rail competition is inefficiencies and higher costs when rail service is not meeting commercial requirements. For instance, when shipments by rail are late, PPG is forced to use trucks to ship non-TIH products to keep the customers operating. However, the truck shipments are at an increased freight cost and the customers are faced with congestion and additional labor to unload multiple trucks. Although the increased freight expense is directly the result of the railroads' deficient performance, they have historically been unwilling to pay for any of the increased trucking costs. In contrast, the railroads will charge shippers for holding cars, but shippers have no similar recourse when shipments are late due to railroad performance. In other more competitive transportation modes, the service providers take responsibility for their service failures.

For TIH products, trucks are not an option. A shipper is basically held hostage to a railroad's poor service. In PPG's experience the railroads have not offered to provide any type of service commitment in contracts while at the same time they insist upon volume guarantees for their benefit. Contract terms on captive traffic rarely are truly negotiated; rather they are dictated by the railroad. PPG continues to work through frustrating, inefficient and costly service issues. To improve service and/or avoid costly switching fees, PPG has implemented third party inter-plant switching services at two facilities to replace the switching performed by the railroads. Also, the railroads' approach on payment terms has forced shippers to accept unreasonable practices that do not exist in a competitive environment. For instance, the railroads' insistence on short, 15-day payment periods reduces shippers' operating capital and makes it difficult for shippers to avoid finance fees. The typical payment terms in the chemical industry are net 30 days. Increased rail competition would afford better solutions for service as there will be other options available and thus more cooperation and participation between railroads and shippers.

Section VII of the Joint Comments provides a great example as to positive impacts of deregulation and vigorous competition in the telecommunications industry and how this has created competing carriers and service options for consumers. Each and every day people's lives are touched by chlorine chemistry. Chlorine is an essential component in 45% of all commercial products; there are many consumers and therefore a large potential consumer impact if the railroad industry remains an oligopoly without further reforms to promote competition. If railroads continue to push for higher rates and provide poor service; the cost of many consumer products will escalate.

There is a distinct difference between the telecommunications industry and the chlor-alkali industry. The telecommunications industry directly touches the consumer and the consumer will not knowingly tolerate such an uncompetitive situation without reaching to government for a solution. The chlor-alkali industry does not directly touch the end-consumer. Unknowingly, the end-consumer is impacted by this uncompetitive situation through rising costs. Furthermore, if U.S. manufacturers become uncompetitive then they may move manufacturing off shore thus resulting in a loss of U.S. jobs.

IV. THE STB SHOULD REVISE ITS COMPETITIVE ACCESS RULES TO FACILITATE RAIL COMPETITION THROUGH EXPANDED RECIPROCAL SWITCHING

Increasing access to more than one rail carrier at PPG's and its customers' captive facilities, would substantially address the problems and concerns of inflated freight rates, poor service, and inefficient routings. As explained in detail in Section IV of the Joint Comments, the Board has ample discretion and authority to review the current competitive access rules, and should do so with an objective of expanding reciprocal switching arrangements to increase rail competition. The current statute authorizes the Board to require the establishment of reciprocal

switching arrangements, “where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service.”² This legal standard is broad and sensible, and it would seem obvious that establishing switching arrangements to provide for greater competition would meet the statutory standard.

However, the Board's competitive access rules, adopted twenty-five years ago, and the decisions interpreting such rules have converted Congress's practical and pro-competitive standard into insurmountable impediments to the establishment of reciprocal switching arrangements.³ These actions have resulted in no competitive access relief having been adopted under various test cases between 1986 and 1996 and, as a result, no shippers have even attempted to obtain such relief from the agency in over a decade.⁴ Given that the state of competition in the rail industry was much more robust when Congress passed the reciprocal switching standard, it would be unreasonable to believe that such arrangements should not be facilitated today, where rail competition has been drastically reduced.

Based on the changes that have occurred in the rail industry since the mid-1980s and 1990s, including the substantial consolidation of the industry down to 4 major players in the U.S. and the transformation in the profitability of the railroads, the STB should initiate a review of its competitive access rules and eliminate the significant barriers that currently exist to the establishment of such arrangements. PPG is aware that Canada has adopted inter-switching rules that provide for “automatic” access to a second rail carrier that services a terminal within an

² 49 U.S.C. § 11102(c).

³ See Ex Parte No. 445, *Intramodal Rail Competition*, 1 I.C.C.2d 822, *aff'd sub nom Baltimore Gas and Electric Co. v. United States*, 817 F.2d 108 (D.C. Cir. 1987).

⁴ *Midtec Paper Corp. v. Chicago and North Western Transportation Company*, 3 I.C.C.2d 171 (1986), *aff'd Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988); *Vista Chemical Company v. Atchison, Topeka and Santa Fe Ry.*, 5 I.C.C.2d 331 (1989); *Shenango, Inc. v. Pittsburgh, C & Y Ry.*, 5 I.C.C.2d 995 (1989), *aff'd sub nom. Shenango, Inc. v. ICC*, 904 F.2d 696 (3d Cir. 1990); ICC Docket No. 41550, *Golden Cat Division of Ralston Purina Company v. St. Louis Southwestern Railway Company*, served April 25, 1996.

established zone of 30 kilometers.⁵ The STB should consider reviewing the Canadian inter-switching model to determine if it would be workable in whole or in part in the U.S. PPG has benefited from the Canadian model at the Beauharnois, Quebec facility. The facility is directly serviced by CSXT track, but also has access to the CN under the competitive rights given to CN pursuant to Canadian inter-switching rules. Because of these rules, PPG has benefited from having access to more reasonable rates at Beauharnois. In fact, the Beauharnois chlorine rates to move product similar distances are significantly less than the rates from PPG's captive facilities. Accordingly, PPG's U.S. captive facilities would benefit from similar reciprocal switching rules, which would give U.S. shippers more access to healthy competition.

V. THE STB SHOULD OVERTURN ITS EXISTING BOTTLENECK POLICY TO INCREASE RAIL COMPETITION

Another area that the STB should re-examine is the current policy allowing a rail carrier to refuse to quote a bottleneck rate. As the Joint Comments point out, the lack of bottleneck rates deprive shippers of the ability to benefit from competition where it already exists and/or deprives shippers of the most efficient routes. PPG has experienced efficiencies through limited use of bottleneck rates, which have been made available under circumstances unique to PPG's TIH shipments, and believes that this practice should be expanded.

As an example, the CSXT services the Natrium, WV plant and can interchange at Benwood Junction, 25 miles south of Natrium, with the Wheeling and Lake Erie Railroad ("WE"). PPG has obtained a rate from CSXT to the interchange, where cars are handed off to the WE, who has access to PPG customers in Ohio and Pennsylvania. By switching the routing to three destinations served by CSXT and the WE to make use of the interchange at Benwood Junction, PPG has reduced total ton miles to these destinations by 55%. Although PPG

⁵ Railway Interswitching Regulations (Canada Transportation Act) SOR/1988-41 (Can.).

appreciates CSXT's efforts in working with PPG on several of these movements, the rate on the bottleneck segment currently remains high, at a revenue to variable cost ratio ("R/VC") well over 180%. Essentially, CSXT agreed to short-haul itself presumably to reduce its carriage of the TIH traffic, but did not take a commensurate reduction in its rates. Nevertheless, the efficiencies achieved in this example lead PPG to believe that reasonable bottleneck rates will create competition and allow more efficient routing. Accordingly, PPG strongly urges the STB to overturn the existing bottleneck policy.

Further, for the reasons explained in the Section IV.C. of the Joint Comments, the Board has the legal authority to change the bottleneck rule and should do so to fulfill the fundamental policy of the Staggers Act "to allow, to the *maximum extent possible*, competition and the demand for services to establish reasonable rates for transportation by rail."⁶

VI. THE RAILROAD INDUSTRY IS FINANCIALLY STRONG

In addition to the policy changes discussed immediately above, PPG believes that the STB should re-examine its methodologies for determining the health of the rail industry through its revenue adequacy determinations. By many different measures, the financial state of the railroad industry is extremely strong,⁷ but very few carriers have been found to be revenue adequate in recent years, and currently no carriers are revenue adequate.⁸ The disconnect between the Board's revenue adequacy determinations and most other financial evaluations of the rail industry requires a careful review and adjustments that will lead to findings by the Board that

⁶ See 40 U.S.C. § 10101(1) (emphasis added).

⁷ Staff of S. Comm. on Commerce, Sci. & Transp., 111th Cong., *The Current Financial State of the Class I Freight Rail Industry* 4-5 (2010).

⁸ *R.R. Revenue Adequacy — 2008 Determination*, STB Docket No. EP 552 (Sub-No. 13), slip op. at 1 (served Oct. 26, 2009); *R.R. Revenue Adequacy — 2009 Determination*, STB Docket No. EP 552 (Sub-No. 14), slip op. at 1 (served Nov. 10, 2010).

are more consistent with the reports from the financial institutions regarding the railroads' economic health.

Section III of the Joint Comments discuss a variety of financial metrics that, by Wall Street standards, indicate an extremely healthy railroad industry including, strong operating revenues, profit margins and operating ratios. In addition to the financial analyses included in the Joint Comments, the health of the industry is evidenced by the abundance of cash that the railroads have on hand. It was publically reported that CSXT repurchased \$1.5B in shares in 2010, \$1.6B in shares in 2008 and \$2.2B in shares in 2007 and it still had \$1.3B in cash as of December 31, 2010. Also the railroad industry stock performance has far outpaced the Dow Jones U.S. Total Market Index. However, the most telling proof of the health of the rail industry is Berkshire Hathaway's acquisition of the BNSF in a deal valued at approximately \$34 billion.

The railroads continue to publicly claim that any action by the government that disrupts their current commercial practices will seriously harm their financial position and dramatically curtail their investment in the future railroad network. PPG views the railroads' claims concerning investment as an empty "threat" with no offer of alternative solutions to address the adverse impacts on U.S. businesses that lack rail competition and incur inflated rail rates and poor service.

According to the historical AAR statistics, TIH products only account for 0.25% of total rail shipments and approximately 0.5% of total revenue. If, at a minimum, a mechanism is put in place to cap the R/VC ratio on TIH products the railroads' financial position would not be dramatically impacted. This would save all of the costs and inefficiencies for all involved parties related to the numerous rate cases that could be potentially filed in the future. PPG is offering this as a rate alternative for TIH products.

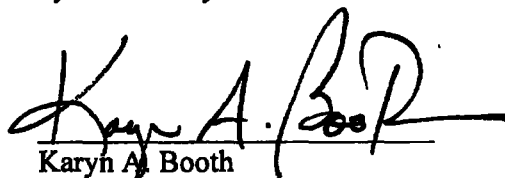
VII. CONCLUSION

For all of the reasons set forth herein and in the Joint Comments, PPG supports the recommendations made by the Joint Comments, including that the Board should change the rules and precedent governing reciprocal switching arrangements and bottleneck rates. PPG requests that the STB initiate proceedings expeditiously after the June 22 hearing for the purpose of implementing the above recommendations.

Respectfully submitted,

PPG INDUSTRIES, INC.

By its Attorney

A handwritten signature in black ink, appearing to read "Karyn A. Booth", is written over a horizontal line.

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